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## ISLAMIC LAW AND SOCIAL TRANSFORMATION: HISTORICAL ANALYSIS TOWARDS EGALITARIAN CHARACTERS

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**Abstract**—The consequences of a social transformation, the Islamic law has replaced the law of *Jahiliyyah*. In history, the Prophet Muhammad and his early followers of Islam really made a stance counter to the legal system and *Jahiliyyah* in their behavior and actions, thereby gaining a strong opposition from the leaders of those who held *Jahiliyyah* system, and even the approach of Muhammad saw, as messenger engaged all including those whom considered marginalized in the social stratification to the teachings of Islam, and it was became an important point in these consequences. This study set out an understanding that Islamic law is involved with human history within the context of *Jahiliyyah* society, with the approach of a cultural phenomenon and humanities. The aim of this paper to discuss social change brought by by Islamic law from *Jahiliyyah* law as background of the study known as *fideistic subjectivism* or *scientific objectivism*. The finding of the study is obvious how Islam has defended and protected the weak group in the society to have equality status with others in before the Islamic law.

**Keywords:** Islamic law, *Jahiliyyah* Law, Social Transformation.

### I. Introduction

Prophet Muhammad received a revelation from Allah SWT first time on Monday the 17th of Ramadan 41 years after his birth, coinciding with the August

6, 610 M.<sup>1</sup> Since that time, Muhammad bin Abdullah undertaking *nubuwat* of Allah SWT to bring Islam to the mankind, which turned out to revolutionized the entire social system, especially the legal system that existed at the ignorant period (*Jahiliyyah*).<sup>2</sup> Islam came into the society of *Jahiliyyah* with Syari'ah (Islamic law system) which is perfect to be able to arrange a fair and egalitarian relations between individuals within community. Basically, the advent of Prophet Muhammad with egalitarian teachings could be evaluated as a social change towards ignorance that was happening in the community, especially the legal system, with the revelation and guidance from Allah SWT.<sup>3</sup>

Islamic law is the built-in commandments of Allah SWT that govern all aspects of life for every Muslim, and includes legal matters which purely spiritual as well as religious affairs.<sup>4</sup> Through an empirical study of

history, Joseph Schacht called the Islamic Law as a summary of Islamic thought, manifestation of the Islamic way of life that is very distinctive, and even as the core of Islam itself.<sup>5</sup>

In the early Islamic period, the Islamic law began to keep his law practice has existed in the community. But the law argued by Muhammad Hamidullah, based on revelation (the *Qur'an*) and Sunnah of Prophet Muhammad, the legal system has become a habit of *Jahiliyyah* was constructed, and replaced altogether with the Islamic law which totally different with predecessor.<sup>6</sup>

As a consequence of social transformation (social changes), the Islamic law reformed *Jahiliyyah* system. In history, the Prophet Muhammad and his early followers of Islam really made a stance counter to the *Jahiliyyah* in their deeds and actions, thereby gaining a strong opposition from the leaders of those who wanted to maintain the *Jahiliyyah* system. And even then, the Prophet Muhammad brought the marginalized in the social stratification to uphold the teachings of Islam, and it was became an important point in these consequences.<sup>8</sup>

This paper set out an understanding that Islamic law has involved with human history-in this context with the approach of a cultural phenomenon

<sup>1</sup> Muhammad Ridho, *Muhammad Rasulullah*, Shalla Allahu 'alayhi wa Sallamu, cet. 1 (Kuala Lumpur: Dar al-Ihya' al-'Arabiyyah, 1966 M), 138-139, 59.

<sup>2</sup> Marshal G. S. Hodgson, *The Venture of Islam: Conscience and History in a World Civilization*, Vol. 1 *The Classical Age of Islam* (Chicago: Chicago University Press, 1974), p. 174.

<sup>3</sup> Robert Roberts, *The Social Law of the Jews: Considered and Compared with Those of the Hebrew and other Ancient Codes*, cet. 1 (London: Curzon Press, 1990), p. 2.

<sup>4</sup> S.D. Goitein, "The Birth-Hour of Muslim Law: An Essay in Exegesis" dalam *Jurnal De Muslim* (1964), 174.

<sup>5</sup> J. I. (Hartford: The Hartford Press, 1960), p. 23.

<sup>6</sup> Joseph Schacht, *An Introduction...*, p. 1. Muhammad Hamidullah, *The Early Islamic Period* (translating and editing by Iqbal, Islamic Research Institut, 1993).

<sup>7</sup> Andrew Rippin, *Muslims: Their History and Culture*, vol. 1 *The Formative Period*, cet. 1 (1990), p. 10.

<sup>8</sup> See Marshal G. S. Hodgson, *The* 174.



story, Joseph Schacht called the Islamic law as a summary of Islamic thought, the manifestation of the Islamic way of life and is very distinctive, and even as the core of Islam itself.<sup>5</sup>

In the early Islamic period, the period of Islam in Makkah, the Islamic law began to keep his law practice that existed in the community. But then, as urged by Muhammad Hamidullah, in verses, based on revelation (the Quran) and Sunnah of Prophet Muhammad, the legal system has become a habit in the *Jahiliyyah* was constructed, and even placed altogether with the Islamic law which totally different with the predecessor.<sup>6</sup>

As a consequence of a transformation (social changes), Islamic law reformed *Jahiliyyah* system.<sup>7</sup> In story, the Prophet Muhammad and his early followers of Islam really made a force counter to the *Jahiliyyah* system in their deeds and actions, thereby gaining a strong opposition from the leaders of those who wanted to maintain *Jahiliyyah* system. And even then, the approach of Muhammad brought the group that 'marginalized' in the social stratification to hold the teachings of Islam was also one of important points in the changing process.<sup>8</sup>

This paper set out an understanding of Islamic law has involved with human history-in this context with *Jahiliyyah*-is a cultural phenomenon and can be

researched with the approach of cultural knowledge and its methodology.<sup>9</sup> With the pros and contra, the study of social change by Islamic law from the law of *Jahiliyyah*, discussed in this paper, attempted to avoid the attitude attributed by Richard C. Martin as fideistic subjectivism or scientific objectivism.<sup>10</sup> Furthermore, the perspective of Islamic Law stands to the marginalized group or poor *mustadl'afin* becomes a critical awareness of the importance of social change by Islamic law in society. sebuah penyadaran penting yang kritis terhadap adanya perubahan sosial oleh hukum Islam di dalam masyarakat.

## II. *Jahiliyyah* Legal System Pre-Islamic Arab society

In general, the period of pre-Islamic Mecca called the period of *Jahiliyyah* which means folly and barbarian. In real terms, expressed by Philip K. Hitti, pre-Islamic Mecca society was a society that did not have the destiny of certain privileges (*no dispensation*), no inspired prophet, and no revealed book as guidance of life.<sup>11</sup>

Refers to the word "*Jahiliyyah*" in the Qur'an, Ali Imron/3 verse 154 (...*yazhunnuna bi Allahi ghayra al-haqqi zhanna al-jahiliyyati*...), al-Ma'idah/5 verse 50 (*afahukma al-jahiliyyati yabghuna*...), al-Ahzab/33 verse 33 (*wala*

<sup>5</sup> L. Hartdord: The Hartdord Seminary Foundation, 1960, p. 23.

<sup>6</sup> Schacht, *An Introduction...*, p. 1.

<sup>7</sup> Muhammad Hamidullah, *The Emergence of Islam*,

Ali Iqbal (translator and editor), cet. 1 (Islamabad:

Islamic Research Institut, 1993), hlm. 64.

<sup>8</sup> Andrew Rippin, *Muslims: Their Beliefs and Practices*,

*1 The Formative Period*, cet. 1 (London: Routledge, 1990), p. 10.

<sup>9</sup> Marshal G. S. Hodgson, *The Venture of Islam...*, p.

<sup>9</sup> Islam is not perceived as man creation, but namun Islam is revealed from the Almighty Allah SWT, see M. Atho Mudzhar, *Pendekatan Studi Islam Dalam teori dan Praktek*, cet. 1 (Yogyakarta: Pustaka Pelajar, 1998), hlm. 37-38.

<sup>10</sup> Richard C. Martin, *Approach to Islam Religious Studies* (Tucson: Arizona Press, 1985), hlm. 2. Bandingkan dengan M. Atho Mudzhar there are two different approached in understanding Islam, these are *idealist approach* and *reductionist approach*, M. Atho Mudzhar, *Pendekatan Studi Islam...*, p. 43.

<sup>11</sup> Philip K. Hitti, *History of Arabs from Earliest Times to the Present*, edisi X (London: The Macmillan Press, 1974), p. 87.



*tabarrujna tabarruja al-jahiliyyati ...*) and al-Fath/48 verse 26 (...*fi qulubihmu al-hamiyyata hamiyyata al-jahiliyyati...*) as designated by Philip K. Hitti and identified by Mohammed Fuad as the verses that contain words "*Jahiliyyah*",<sup>12</sup> sufficiently to give a hint that the *Jahiliyyah* it has characteristics of the aspects of belief in God (*zhann bi Allahi*), the rules of civilization (*hukm*), life style (*tabarruj*) and character of arrogance (*hamiyyah*). In relation with the history of humanity, the laws of *Jahiliyyah* were made in favor of certain groups which could be named a racial character, feudal and patriarchal.

### 1. Racial Characteristic

The first trait was racial in the laws of *Jahiliyyah* could be demonstrated by a sense ultra nationalism and tribalism (*'ashabiyyah*) as well as protection to the people of the same tribe (*qabilah*). In pre-Islamic Arab society, known term *al-'ashabiyyah* or *al-qawmiyyah* which means that a person's tendency to defend desperately against those who were in their tribe (*qabilah*) and to others tribes under their protection. Right or wrong the person, so long as he assessed his inner group, would always be defended desperately when dealing with people who were assessed as its outer group.<sup>13</sup>

The Arabs pre-Islamic have a tremendous sense of nationality (ultra nationalism). They thought of themselves (Arab) as a noble nation and other nations considered (*'Ajam*) has a lower status. Ibn Jarir al-Tabari recounts a legal incident of marriage *jahiliyyah* racial character with the underlying spirit of ultra-nationalism.

The story was the story of Nu'man bin Munzhir rejected a Persian king Khurram Abuwiz Hurqa on his son because of the laws of *Jahiliyyah* were held by him. Nu'man considered a nation of "Arab" therefore it was prohibited in marriage with a *Ajam*, though suitors was a king, as was believed to degrade the quality of the 'Arab's in Nu'man and his son.<sup>14</sup>

In the groups interaction, pre-Islamic Arabs always defended the interests of group and group members. Someone would always be defended by the members of a inner group when dealing with members of other group (outer group), either right or wrong position.<sup>15</sup> Right and wrong determined by group respectively.<sup>16</sup> An example could be adduced in the law of battle and murder which determined by the feeling of tribe (*ashabiyyah*). For instance, the battle of Fijar which took place in the prohibited month (*asyhar al-haram*) between tribe *Kinana* and tribe *Jam'* *Ailan* (both were tribes of *Quraysh*) which witnessed by prophet Muhammad saw when he was 14/15 years old (he has not appointed as prophet). The war happened because to defense the members of these families, each of which involved clashes and killings in the market *Ukaz*, regardless of fault of each person who defended. Whatever the circumstances, if there was one member of a group attacked, then necessarily all members of the group would defend them.<sup>17</sup>

<sup>14</sup> see dari al-Tabari, *Tarikh al-Tabari*, II: 294-295, buku 'Ali Abd al-Wahid Wafi, *al-Mawarid al-Fiqhiyyah*, Anshari Umar Sitanggal dan Rosdhan (penyunting) (Bandung: al-Ma'arif, 1984), p. 17-18.

<sup>15</sup> 'Ali Husni al-Khurbuthuli menyatakan bahwa orang Arab pra-Islam (*Jahiliyyah*) secara umum selalu membela anggota *qabilah*-nya, baik dalam perang maupun menganiaya (*zhalm*) maupun dalam urusan damai (*mazhlim*), lihat 'Ali Husni al-Khurbuthuli, *Ma'a al-'Arab* (I) ... p. 21.

<sup>16</sup> see *Ibid.*, hlm. 6.

<sup>17</sup> see Ibn Hisham, *al-Sirah al-Nabawiyah*, II: 100, Hisham, notasi oleh Musthafah al-Sayid, III: 100 (Mesir: Syirkah Maktabah wa Matba'at al-Nabawiyah).

<sup>12</sup> Lihat Muhammad Fuad Abd al-Baqi, *al-Mu'jam al-Mufahras li Alfadz al-Qur'an al-Karim*, cet. I (ttp.: Dar al-Fikr, 1986 M / 1406 H), p. 184.

<sup>13</sup> see *al-'Araba fi Mizan al-Qawmiyyah*, hlm 10 yang terdapat dalam Ali Husni al-Khurbuthuli, *Ma'a al-'Arab* (I): Muhammad wa al-Qawmiyyah al-'Arabiyyah, cet. II (Kairo: al-Mathbu'ah al-Haditsah, 1959), p. 5.

### 2. Feudal Character

Feudal character of Islamic law envisaged by the rich and the poor and the nobility. The rich and the nobility of Islam was the holder of power and became prosperous classes in Makkah.<sup>18</sup>

Although there was a sense of pride (*muru'ah*) within Arab pre-Islam, as depicted in the history of Arabs pre-Islamic, a group leader must be generous. Philip K. Hitti,<sup>19</sup> but Lapidus that Arab pre-Islamic had a wrong sense of pride to the poor, neglect of alms and unsupport for the weaker community.<sup>20</sup> Legal history of slavery in Arabia was strong evidence of the character of the feudal Arab society pre-Islamic. A man who has a degree of pride of men in general, traded anything by the other human rights for gain being.<sup>21</sup>

### 3. Patriarchal Character

The next characteristic attached to the law of pre-Islamic Arab was patriarchal. Haifaa mentions that power at that time highly concentrated in the hands of a few, positioned high.

Babi al-Halabi wa Awladihi, 1949, hlm. 184.

M.A. Shaban, *Islamic History: A.D. 600-750*, cet. IX (Cambridge University Press, 1971), p. 8.

Philip K. Hitti, *History of Arab*, I: 100, M. Lapidus, *A History of Islam* (Cambridge: Cambridge University Press, 1989), see Washington Irving, *Life of Muhammad* (Dent & Son Lt., 1949), p. 13-14.



## 2. Feudal Characteristic

Feudal character of the Arab pre-Islamic law envisaged by the superiority of the rich and the nobility over the poor and oppressed group. The nobility of Arabia pre-Islamic was the holder of power, and at that time became prosperous and wealthy in Makkah.<sup>18</sup>

Although there was good value (*al-fa'la*) within Arabian society pre-Islamic as depicted in the poems of the pre-Islamic, namely that good leader must be generous, as noted by K. Hitti,<sup>19</sup> but mentioned by Hitti that Arab pre-Islamic society had a sense of pride that neglect of the neglect of almsgiving and of support for the weaker member of the community.<sup>20</sup> Legal system and the existence of slavery in the pre-Islamic was strong evidence of the character of the feudal law of *Jahiliyyah* pre-Islamic was. A slave was a man who has a degree far below the level of men in general, could be treated anything by the owner, and had no rights for granted as human.

## 3. Patriarchal Characteristic

The next character was strongly related to the law of *Jahiliyyah* was patriarchal. Haifaa mentioned that men in that time high in the gender hierarchy, positioned higher than women.

Women received discrimination, unfair treatment, and even considered as embodiment of sin. *Jahiliyyah* legal system stated that women did not earn the right for inheritance. The birth of a daughter was considered a disgrace, so much that then buried alive as a baby. In short, women were treated as a thing and not as a person.<sup>22</sup>

Conditions of women in the *Jahiliyyah* period as portrayed in the Qur'an al-Nahl/16 verse 58-59 (*wa idza busysyira ahaduhum bi al-untsa zhalla wajhuhu muswaddan wa huwa kazhim, yatawara min al-qawmi min su'in ma busysyira bihi, ayumsikuhu 'ala hunin am yadussuhu fi al-turab...*). The verse tells of the attitude of the *Jahiliyyah* in response to news of the birth of her daughter who was considered very shameful, lowered self-esteem of parents and families, so that these girls that needed to be killed or buried alive. It shows a story how Arab women pre-Islam treated at patriarchal *Jahiliyyah*.

*Jahiliyyah* legal system in Arab society pre-Islam with three main characters as described above as foundation basis to the discussion of Islamic legal system which brought social changes in the law system revolutionary.<sup>23</sup>

## III. Revolutionary of Islamic law and Egalitarian

Clearly stated that the Qur'an rejected the law of *Jahiliyyah* due to full of desires and only take aside to certain groups in society. Further asserted that Islamic law is the only law that should be held by the people coming from God and

<sup>18</sup> Hitti, *History of Arab...*, hlm. 95.

<sup>19</sup> Hitti, *History of Arab...*, hlm. 95.

<sup>20</sup> Hitti, *History of Arab...*, hlm. 95.

<sup>21</sup> Hitti, *History of Arab...*, hlm. 95.

<sup>22</sup> see Haifaa A. Jawad, *The Rights of Women in Islam; An Authentic Approach*, cet I (New York: S.T. Martin's Press, 1989), p. 1-3.

<sup>23</sup> see Ira M. Lapidus, *A History of Arab...*, hlm. 19-20.



bring the principles of justice and social equality.<sup>24</sup>

In the early period of Islam, Prophet Muhammad spread the Islamic teachings, universal to all mankind, under the guidance of revelation from Almighty Allah SWT. W.M. Watt detailing the teachings of Islam as taught by Prophet Muhammad in the early period of Islam into the 5 (five) key themes, namely; God's Goodness and Power, the Return to God for Judgement, Man's Response – gratitude and worship, Man Response to God – Generosity, and message of Prophet Muhammad.<sup>25</sup>

The core message of prophet Nabi Muhammad saw is called *tawhid* that is teachings to believe in the One True God, the Almighty, the Creator of the universe and Superintendent judge for all creatures (including humans) on all actions.<sup>26</sup> Logical consequence of this doctrine is the obligation to worship and give thanks to God and responsible to be egalitarian and love among mankind.<sup>27</sup> In short, it can be said that the teachings of the early period is true believe in hereafter, ethical and prayer as mentioned by Lapidus; eschatological piety, ethical nobility and prayer formed the basis of early Islam.<sup>28</sup>

In general, Islamic law stands on the principles that must be maintained in absolute and universal. These principles, as expressed by Masdar F. Mas'udi, is strong and study (*qath'i*) and acceptance

of Islamic law as a whole.<sup>29</sup> These principles identified by Masdar, among others, is the principle of individual freedom and responsibility,<sup>30</sup> principles of equality in the presence of Allah,<sup>31</sup> principle of justice,<sup>32</sup> principle of equality before the law,<sup>33</sup> principle of not harming yourself and others,<sup>34</sup> principles of criticism and social control,<sup>35</sup> the principle of keeping promises and upholding the agreement,<sup>36</sup> the principle of mutual help for the good,<sup>37</sup> principle to protect the weak,<sup>38</sup> the principle of consultation in matters of joint,<sup>39</sup> principle of equality in family,<sup>40</sup> and principle to treat others in good way (*ma'ruf*) between husband and wife.<sup>41</sup>

<sup>29</sup> Masdar Farid Mas'udi, *Islam dan Hak-Hak Rakyat: Perempuan: Dialog Fiqh Pemberdayaan*, cet. II (Bandung: Mizan, 1997), p. 29-30.

<sup>30</sup> Surat al-Zalzalah/99 ayat 7-8, *Fa man ya'mal minqar dzarrotin khayran yarahu. Ma man ya'mal minqar dzarrotin syarran yarahu.*

<sup>31</sup> Surat al-Hujurat/49 ayat 13, *Ya ayyuha al-nasu khalafnakum min dzakarim wa untan wa jalafnakum syu'uban wa qaba'ilan li ta'arafu. inna akramakum 'inda Allahi atqakum.*

<sup>32</sup> Surat Al-Ma'idah/5 ayat 8, *I'dilu huwa aqrabu li taqwa.*

<sup>33</sup> Surat Al-Ma'idah/5 ayat 8, *Wa la yajrimakum syana'anun qawmin 'ala alla ta'dilu... dan juga hadits riwayat al-Bukhari, 'Ya ayyuha al-nasu innama huwa al-ladzina min qablukum annahum kanu idza sawu fihim al-syarifi tarakahu wa idza saraga fihim al-dha'ifu agamu 'alayhi al-haddu wa aymu Allah. Inanna Fatimata binta Muhammadin saraga lazzina yadaha.*

<sup>34</sup> Surat al-Baqarah/2 ayat 279, *La tadzlimuna wa la tudzlamuna* dan Hadits riwayat Ibn Majah, *La dhurmu wa la dhirara.*

<sup>35</sup> Surat al-Ashr/103 ayat 1-3, *Wa al-'Ashr, innu al-insana lafi khusrin. illa al-ladzina amanu wa 'amilu shalihati wa tawashaw bi al-haqqi wa tawazawu bi al-shabri.*

<sup>36</sup> Surat al-Isra/17 ayat 34, *Wa awfu bi al-'ahdi. inna al-'ahda kana mas'ulan*

<sup>37</sup> Surat al-Ma'idah/5 ayat 2, *Wa ta'awunu 'ala al-birrati al-taqwa.*

<sup>38</sup> Surat al-Nisa/4 ayat 75, *Wa ma lakum la taqimuni sabili Allahi wa al-mustadh'afina min al-rijali wa al-nisa' wa al-wildani...*

<sup>39</sup> Surat al-Syura/42 ayat 38, *Wa amruhum syuru baynahum.*

<sup>40</sup> Surat al-Baqarah/2 ayat 187, *Hunna libasun lahu wa antum libasun lahunna...*

<sup>41</sup> Surat al-Nisa/4 ayat 19, *Wa 'asyiru kumu bi al-ma'ruf...*

<sup>24</sup> al-Qur'an surat Al-Ma'idah ayat 50 berbunyi: *"afa hukma al-jahiliyyati yabghuna. Wa man ahsanu min Allahi hukman li qawmin yuqinun"*. Ayat ini didahului dengan ayat yang menerangkan perintah Allah SWT untuk memerangi dan menggunakan hukum Islam yang telah diturunkan oleh Allah SWT, lihat surat Al-Ma'idah ayat 48-49.

<sup>25</sup> W.M. Watt, *Muhammad: Prophet and Statesman*, cet. II (reprint) (Oxford: Oxford University Press, 1969), hlm. 23-24.

<sup>26</sup> Marshal G.S. Hodgson, *The Venture...* 1:163.

<sup>27</sup> Ira M. Lapidus, *A History...*, p. 24.

<sup>28</sup> *Ibid.*

With regard to Islam, al-Hujurat/49 verse the most honorable Almighty is the most powerful, either man somehow come from. Mentioned in the beginning that man was created from origin, it is from man and then dispersed to various tribes. It is also stress humans necessary to communication and interaction was narrated down with events, including event the time of *fath al-n* Rabah caled to prayer the al-Harith bin Hish because Bilal was a "for Suhayl bin 'Amr response the assessment if the assessment surely Allah will turn reverse."<sup>42</sup>

If then there are law that seems incor egalitarian principle and then the rule must be context of the social legal attention to its function to the rules of non-egalitarian at the time of *Jahiliyya* law of inheritance inheritance among men one versus two parts Qur'an, according understanding, as example, must considering two important give the inheritance men and women the subjects receiving an

<sup>42</sup> Abu al-Hasan 'Ali bin Ali Nuzul, Abu al-Qasim Hib Nashr (pentahqiq), (Kairo: 1995).



Islamic law as a whole.<sup>29</sup> These are identified by Masdar, among which is the principle of individualism and responsibility,<sup>30</sup> principles of justice,<sup>31</sup> principle of equality before the law,<sup>32</sup> principle of not harming self and others,<sup>33</sup> principles of family and social control,<sup>34</sup> the principle of keeping promises and upholding agreement,<sup>35</sup> the principle of mutual respect for the good,<sup>36</sup> principle to protect the principle of consultation in matters of joint,<sup>37</sup> principle of equality in way (ma'ruf) between husband and

With regard to egalitarianism in Islam, al-Hujurat/49 verse 13 states that the most honorable before Allah Almighty is the most righteous, not the most wealthy, most clever or most powerful, either man or woman, and somehow come from any tribe. Mentioned in the beginning of the verse that man was created from the same origin, it is from man and a woman who then dispersed to various groups and tribes. It is also stressed that among humans necessary to make the mutual communication and interaction. The verse was narrated down with respect to several events, including events that occurred at the time of *fath al-makkah*. Bilal bin Rabah came to prayer and assessed by the al-Harith bin Hisham inappropriate because Bilal was a "former" black slaves. Suhayl bin 'Amr responded by stating that the assessment if the act of Bilal's wrong, surely Allah will turn and sent down the verse.<sup>42</sup>

If then there are the rules of Islamic law that seems incompatible with the egalitarian principle and other principles, then the rule must be understood in the context of the social reality context and legal attention to its function as a counter to the rules of non-egalitarian applicable at the time of *Jahiliyyah*. For example, the law of inheritance which divide the inheritance among men and women with one versus two parts as mentioned in the Qur'an, according to an egalitarian understanding, as expressed by Masdar, for example, must be understood by considering two important things. First, to give the inheritance to women, and put men and women the same status as subjects receiving an inheritance, then it

means that Islamic law has been reformed quite revolutionary and radical law of *Jahiliyyah* which has been there before, that did not make women as subjects of the recipient inherited property and could even become the estate itself. Second, socio-economic setting of family life in the emergence of the law was a family living expenses were borne by men, so that dividing the inheritance of men with the legacy that is greater than the legacy of women is a fair division. That way, the rules of Islamic law is the rule of law that have an egalitarian character, not racial, not feudal and patriarchal.

#### IV. Reaction Against Islam and Islamic Law

Islam emerged in the *Jahiliyyah* society by bringing social change, against the legal system that has gone before. Given the significant changes by Islam against the law of Arab society pre-Islamic, the Islamic mission got response from the community, both from community groups who wanted changes as well as from community groups that supported the existing law of *Jahiliyyah*.<sup>43</sup>

##### 1. Acceptance of Islam by the *Jahiliyyah* Community

The early acceptance group of Islam, as identified by Albert Hourani consisted of several young men (in a relatively small number) from an influential of tribe Quraish, some people (in a relatively large number of) members of small families and weak, the people which under protection of the tribe of Quraish and some workers and slaves.<sup>44</sup> *Jahiliyyah* people who welcomed the Islamic teachings were among the

Abu al-Hasan 'Ali bin Ahmad al-Wahidi, *Asbab al-Nuzul*, Abu al-Qasim Hibatullah ibn Salamah Abu Nashr (pentahqiq), (Kairo: Maktabah al-Dakwah, t.t.), p. 295.

<sup>43</sup> Marshal G.S. Hodgson, *The Venture...*, I: 174.

<sup>44</sup> Albert Hourani, *A History of The Arab Peoples*, cet. I (Cambridge: Belknap Press of Harvard University Press, 1992), p. 17.



migrants within the marginal group and and poor-Lapidus said they were people who dissatisfied with the conditions of moral and social circumstance that existed and then accept an Islam as alternative.<sup>45</sup>

Clearly, the first reverted to Islam were women, that was the wife of the Prophet Muhammad., Khadijah bint Khuwaylid,<sup>46</sup> then a young man 10 years old Quraysh, the son of the Prophet Muhammad's uncle, long nurtured by the Prophet Muhammad., that 'Ali ibn Abi Talib as the first boy who followed the teachings of Prophet Muhammad.,<sup>47</sup> followed then a slave given by Khadijah who later liberated by the Prophet Muhammad. before he took on the task prophethood (*nubuwwah*), Zayd bin Haritsah<sup>48</sup> and the next four was a gentle and caring man Abu Bakr al-Siddiq bin Abu Quhafah, who has real name 'Abd Allah dan laqab 'Atiq.<sup>49</sup> Beginning with these four person, slowly Prophet Muhammad. started well received by other *Jahiliyyah* society that would accept the changed, especially from groups identified above.

Prophet Muhammad always treated the egalitarian ways to the followers, without distinguishing the origin, social status and gender. Prophet Muhammad is the main example for the Muslims showing the attitude of humility to the followers. There were commandment which sent down 3 years after the first revelation in order to spread Islamic publicly,<sup>50</sup> who took an order to have a humble attitude to the followers.<sup>51</sup>

Recorded in history, some events that depicted the life of an egalitarian and

contrasts with the laws of *Jahiliyyah*, including the role of a woman named Khadijah bint Khuwaylid in the spreading of Islam,<sup>52</sup> liberation of Bilal bin Rabah by Abu Bakr,<sup>53</sup> rejection of the Prophet Muhammad towards feudalism and racial attitudes to Bilal bin Rabah,<sup>54</sup> changing attitude of Umar bin Khattab after embraced that against the law of *Jahiliyyah*<sup>55</sup> and several others events.

## 2. Opposition towards Transformation of Islamic Social

Before Prophet Muhammad saw did reformation to entirely law of *Jahiliyyah*, it was begun with the faith and religious rituals, almost there were no rejection towards Islam from *Jahiliyyah* society.<sup>56</sup> However, after Prophet Muhammad saw. openly did *indzar* to *Jahiliyyah* society pre-Islamic, Islam got a great resistance from the group of rich and powerful nobles at the time *Jahiliyyah*, the group of the tribe of Quraish who actually the Prophet Muhammad belong to.<sup>57</sup>

Tor Andrae asserts that based on the descriptions in the Qur'an, the conflict between the Prophet Muhammad. (Islam) with the Quraysh *Jahiliyyah*, has two closely related aspects of the religious and social aspects. Aspects of religious related

<sup>52</sup> Khadijah strengthen Prophet Muhammad saw. after received revelation., supported him totally see Ibn Hisyam, *Ibid.* him. 237-239.

<sup>53</sup> Bilal released by Abu Bakr see Ibn Hisyam, *Ibid.* him. 317-318.

<sup>54</sup> Prophet warned Abu Dzar al-Ghifari which called him with *Ibn al-sawda'* and he said, *innaka imra'un min al-Jahiliyya. laysa li ibn 'I baydha' 'ala ibn al-Farwah fadhli illa bi al-taqwa aw 'amal salih*, lihat 'Ali bin al-Wahid Wafi, *al-Musawah...*, him. 11-12.

<sup>55</sup> Umar lament when he remembered he buried slave daughter, in *Jahiliyyah* period before Islam, see Ibn Hisyam, *Sira...*, I: 400-402.

<sup>56</sup> Tor Andrae, *Mohammed The Man and His Faith* (Mohammed Sein Leben und Sem Glaube), Translated by Menzel (translator), cet. 1 (New York: Harper Torchbooks, 1960), hlm.116

<sup>57</sup> *Ibid.*, hlm. 117-118

<sup>45</sup> Ira M. Lapidus, *A History...*, hlm. 24.

<sup>46</sup> Ibn Hisyam, *al-Sira...*, I: 240

<sup>47</sup> *Ibid.*, hlm. 245

<sup>48</sup> *Ibid.*, p. 247-248

<sup>49</sup> *Ibid.*, p. 249-250

<sup>50</sup> *Ibid.*, p. 262

<sup>51</sup> *wa andzir 'asyirataka al-aqrabin wakhfidh janahaka li man 'ittaba'aka min al-mu'minin...*



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to the beliefs about God that there is no deity to be worshiped except Allah SWT. Moreover, the faith about hereafter was something new to the people of *Quraisy* that never been heard before from their ancestors. Apparently, the religious aspect shared by the tribes of *Jahiliyyah* was both a social bond united the members of each tribe. Therefore, embracing Islam was considered out of tribal ties that already existed and changed the dominion order in the *Jahiliyyah*.<sup>58</sup>

In history, there were several discussions and debates among the Quraysh with Abu Talib, Quraysh and Prophet Muhammad, and between the Quraysh with the King of Abyssinia Najasyi in concluding several objections Quraysh against Islam and Prophet Muhammad. At least three times the conversation between the Quraysh with Abu Talib who became patron of Prophet Muhammad: (1) come in peace,<sup>59</sup> (2) by trying to put pressure associated with the position of Abu Talib at the Quraysh,<sup>60</sup> and (3) by offering the exchange of Prophet Muhammad with bin al-Walid Umarah.<sup>61</sup>

In a conversation with the Prophet Muhammad himself recorded at least three important events: (1) of cursing the Prophet Muhammad as a magician, poet, healer, and even a crazy person, (2) in the conversation which ended with calling Prophet Muhammad as a fool, and (3) offer to stop Islam and became one of the richest, most powerful, most glorious, and would be protected from interference with evil.<sup>62</sup> While the conversations between the Quraysh with Najasyi king in

Abyssinia was to ask the king to return Muslim refugees to their homes Mecca.<sup>63</sup>

Quraisy made an objections against Prophet Muhammad saw, deemed to have made some mistakes these are: *sabb al-alihah*, *'aib al-din*, *tasfih al-ahkam*, *syatm al-aba'* dan *tafriq al-jama'ah*.<sup>64</sup> the Prophet Muhammad, still refused to stop the spread of Islam to the general public who used the law of *Jahiliyyah*. Determination of the Prophet Muhammad was reflected in his statement to Abu Talib, *ya 'amm law wadha'uw al-syams fi yamini wa al-qamar fi yasari 'a/a an atruka hadza al-amr hatta yuzhhirahu Allahu aw ahlaka fih ma taraktuhu*.<sup>65</sup>

It obvious that rejection towards Islam and Prophet Muhammad was closely related to changes in laws that affect social structures and patterns of community leadership. Social structure and leadership of the nuances of siding with the rich, nobles and rulers, to the social structure and egalitarian leadership nuanced and siding with the *muastadl'afin* in social structure.

## V. Conclusion

With a background in *Jahiliyyah* law pre-Islamic which was racist, feudal and patriarchal, Islam was brought up with legal changes to the character contrary to the laws of *Jahiliyyah*. Islam teaches equality is drawn from the principles and laws of Allah and the Prophet Muhammad and his followers who wanted the egalitarian life. Conflicts

<sup>58</sup> *Ibid.*, hlm 120-122.

<sup>59</sup> Ibn Hisyam, *al-Sira*... I: 265.

<sup>60</sup> *Ibid.*

<sup>61</sup> *Ibid.*, hlm. 266-267.

<sup>62</sup> *Ibid.*, him. 293-294.

<sup>63</sup> Followed Prophet Muhammad saw, migrated and asked protection from Abyssinia king and Quraisy representative came and asked those migrated people returned to Mecca Injil, *Ibid.*, him. 300.

<sup>64</sup> See A. Guillaume, *The Life of Muhammad. A Translation of Ibn Ishaq's Sirat Rasul Allah*, cet. III (Karachi: Pakistan Branch Oxford University Press, 1970), p. nx-no

<sup>65</sup> Ibn Hisyam, *al-Sira*... I: 265-266.



of Quraish against Islam which was closely related to the religious aspects and social aspects was a counter to the egalitarian system of Islamic law. And by implication, the understanding of Islamic law must be followed by the realization that Islamic law was to have an egalitarian character and it was the social change of the to egalitarian Islamic law.

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